

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ORIGINAL

ILLINOIS POWER COMPANY)

Complainant,)

v.)

M.J.M. ELECTRIC COOPERATIVE,)
INC., an Illinois not for profit corporation.)

Respondent.)

DOCKET NO. 00-0832

ANSWER

M.J.M. ELECTRIC COOPERATIVE, INC., Respondent, (MJM) by its attorneys LEE J. PLUMMER and GROSBOLL, BECKER, TICE & REIF, Jerry Tice of Counsel in answer to the Complaint filed herein by ILLINOIS POWER COMPANY, Complainant (IPC) states as follows:

1. MJM admits the allegations of paragraph 1 of the Complaint.
2. MJM admits the allegations of paragraph 2 of the Complaint and further states MJM provides electric service in Jersey County, Illinois.
3. MJM admits the allegations of paragraph 3 of the Complaint.
4. MJM admits the allegations of paragraph 4 of the Complaint.
5. MJM admits that Exhibit 3 purporting to be a copy of the boundary line map is attached to the Complaint of IPC and that such purported boundary line is highlighted thereon along with the area of the ten customers made the subject of this complaint. MJM denies each of the remaining allegations of paragraph 5 of the Complaint. MJM further states that the boundary line actually observed by the parties to the agreement is not accurately portrayed by Exhibit 3 and that nine of the ten customers made the subject of the Complaint are all on the

MJM side of the correct territorial boundary line and the remaining customer situated on the IPC side of the territorial boundary line was released by IPC to MJM on or about August 17, 1995.

6. MJM admits that it has been providing electric service to the ten customers listed in paragraph 6 of the Complaint and further states that such service commenced as far back as May 16, 1940 and as recently as April 9, 1996. MJM further states that such electric service has been continuous from each of such dates. MJM further states that such electric service commenced with respect to each of the customers as follows:

- A. Bruce Hanold connected 4-28-93
- B. Bruce Hanold connected 12-30-55
- C. Jim Rathgeb connected 5-16-40
- D. Jim Rathgeb connected 12-12-84
- E. Jim (Schancks) Shank 9-26-95 (released by IP to MJM on or about 8-17-95)
- F. Chuck DeProw connected 4-9-96
- G. John Ross connected 7-1-61
- H. Tri-Cor Excavating (John Ross) connected 5-25-78
- I. Dennis Lucker connected 2-24-60
- J. June Lucker connected 5-4-94 (split service from (I))

7. MJM admits that the point of delivery for the customer Jim Shank is on the IPC side of the proper territorial boundary line but that such customer was released by IPC to MJM pursuant to an agreement between IPC and MJM on or about August 17, 1995 and that MJM has provided electric service to such customer continuously since on or about September 26, 1995. MJM denies each and every one of the remaining allegations of paragraph 7 of the

Complaint.

8. MJM admits that Section 3(a) of the Service Area Agreement is attached to the IPC Complaint but MJM states such agreement speaks for itself. MJM further states that Section 3 (b) and Section 8 of the Service Area Agreement specifically provides as follows:

Section 3(b)

"Each party shall have the right to continue all of its existing customers and all of its existing points of delivery which are located within the Service Area of the other party on the effective date."

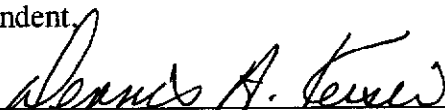
Section 8

"If either party should request the other to furnish electric service to a customer who the requesting party is entitled to serve by reason of this Agreement and the other party does render such service, this Agreement shall not thereby be voided but shall otherwise remain in full force and effect".

MJM denies each of the remaining allegations of paragraph 8 of the Complaint.

WHEREFORE, MJM requests the Illinois Commerce Commission to deny the prayer for relief of IPC and to determine that MJM is entitled to serve each of the ten customers made the subject of the IPC Complaint and to further dismiss such Complaint and to provide such other and further relief to MJM as the Illinois Commerce Commission deems just and equitable.

MJM ELECTRIC COOPERATIVE, INC.,
Respondent.

By 
Dennis A. Keiser, General Manager

AFFIRMATIVE DEFENSES TO THE COMPLAINT OF

ILLINOIS POWER COMPANY

M.J.M. ELECTRIC COOPERATIVE, INC. Respondent (MJM) for affirmative defenses to the Complaint filed herein by ILLINOIS POWER COMPANY, Complainant (IPC)

states as follows:

FIRST AFFIRMATIVE DEFENSE

(IPC'S CLAIM VIOLATES THE SERVICE AREA AGREEMENT AND MAP)

1. MJM is an Illinois general not for profit corporation engaged in the business of sale and distribution of electric energy in the State of Illinois and specifically in Jersey County, Illinois and is an electric supplier within the meaning of the Illinois Electric Supplier Act 220 ILCS 30/1 et. seq. (Act).

2. MJM commenced providing electric service to each of the ten customer made the subject of the IPC Complaint filed herein, such customers being identified and electric service being commenced to each such customer as follows:

- A. Bruce Hanold connected 4-28-93
- B. Bruce Hanold connected 12-30-55
- C. Jim Rathgeb connected 5-16-40
- D. Jim Rathgeb connected 12-12-84
- E. Jim (Schancks) Shank 9-26-95 released by IP to MJM on or about 8-17-95
- F. Chuck DeProw connected 4-9-96
- G. John Ross connected 7-1-61
- H. Tri-Cor Excavating (John Ross) connected 5-25-78
- I. Dennis Lucker connected 2-24-60
- J. June Lucker connected 5-4-94 (split service from (I))

3. With respect to each of the foregoing described customers other than the customer Jim Shank, each such customer is located on the MJM side of the proper territorial boundary line located in the Southeast Quarter of Section 13, Township 7 North, Range 10 West of the

Third Principal Meridian, Jersey County, Illinois as such territorial boundary line has been recognized by each of MJM and IPC since on or about the date of the Service Area Agreement on March 18, 1971 and the approval of the same by the Illinois Commerce Commission (Commission) on or about August 4, 1971.

4. With respect to the customer Jim Shank, which customer is located on the IPC side of the proper and recognized territorial boundary line in the aforesaid Quarter Section, IPC released such customer to MJM for the providing of electric service by MJM to such customer on or about August 17, 1995 pursuant to Section 8 of the Service Area Agreement and MJM did on or about September 26, 1995 commence electric service to such customer and has provided electric service to such customer continuously thereafter.

WHEREFORE, MJM requests the Illinois Commerce Commission to deny the prayer of the Complaint filed by IPC and to dismiss such Complaint, and to further find that MJM is the proper electric supplier to provide electric service to each of the foregoing described customers and for such other relief as the Commission deems just and equitable.

SECOND AFFIRMATIVE DEFENSE

(IPC'S CLAIM IS WAIVED)

1-2. MJM realleges paragraphs 1 and 2 of the First Affirmative Defense as and for paragraphs 1 and 2 of the Second Affirmative Defense.

3. With respect to each of the ten customers made the subject of the IPC Complaint MJM states that, to the extent the Illinois Commerce Commission determines that any of such customers are not located on the MJM side of the territorial boundary line as properly depicted and recognized by MJM and IPC, then IPC has waived any right under the Service Area Agreement to serve such customers for the reason that IPC has failed to object thereto and has

acquiesced in and authorized such electric service by MJM to each of foregoing described customers for the periods of time commencing with the date such electric service until the date of filing of the Complaint herein by IPC.

4. Such action by IPC constitutes a waiver of any established contract rights under the Service Area Agreement for IPC to serve any of the foregoing described customers.

WHEREFORE, MJM requests the Commission to deny the prayer of the Complaint filed by IPC and to dismiss the Complaint filed herein and to enter judgment in favor of MJM to provide such electric service to each of the foregoing described customers and to provide such other and further relief to MJM as the Commission deems just and equitable.

THIRD AFFIRMATIVE DEFENSE

(IPC'S CLAIM IS BARRED BY LIMITATIONS APPLICABLE TO

CONTRACTS 735 ILCS 5/13-206)

1-2. MJM realleges paragraphs 1 and 2 of the First Affirmative Defense as and for paragraphs 1 and 2 of the Third Affirmative Defense.

3. With respect to each of the ten customers made the subject of the IPC Complaint, MJM states that to the extent the Commission determines that any of such customers are located on the IPC side of the territorial boundary line, then in such event IPC is barred from providing electric service to any such customer to which MJM commenced the providing of electric service more than 10 years prior to the filing of the Complaint herein, all as provided in 735 ILCS 5/13-206, such customers being identified as follows:

Bruce Hanold connected 12-30-55

Jim Rathgeb connected 5-16-40

Jim Rathgeb connected 12-12-84

John Ross connected 7-1-61

Tri-Cor Excavating (John Ross) connected 5-25-78

Dennis Lucker connected 2-24-60

WHEREFORE, MJM requests the Commission to deny the prayer of the Complaint filed by IPC and to dismiss the Complaint filed herein and to enter judgment in favor of MJM to provide such electric service to each of the foregoing described customers and to provide such other and further relief to MJM as the Commission deems just and equitable.

FOURTH AFFIRMATIVE DEFENSE

(IPC'S CLAIM IS BARRED BY THE LIMITATIONS OF 220 ILCS 30/7)

1-2. MJM realleges paragraphs 1 and 2 of the First Affirmative Defense as and for paragraphs 1 and 2 of the Fourth Affirmative Defense.

3. With respect to each of the ten customers made the subject of the IPC Complaint, MJM, states that to the extent the Commission determines that any of such customers are located on the IPC side of the territorial boundary line, then IPC is barred from claiming the right to provide electric service to any of the foregoing described customers for the reason that the Complaint by IPC was filed more than 18 months after MJM commenced providing electric service to any of such customers and therefore IPC is barred by Section 7 of the Act (220 ILCS 30/7) from complaining about such electric service by MJM to any of such customers for the reason that IPC has failed to file a complaint with the Illinois Commerce Commission within 18 months after commencement of electric service to any such customers as required by Section 7 of the Act.

WHEREFORE, MJM requests the Commission to deny the prayer of the Complaint filed by IPC and to dismiss the Complaint filed herein and to enter judgment in favor of MJM

to provide such electric service to each of the foregoing described customers and to provide such other and further relief to MJM as the Commission deems just and equitable.

FIFTH AFFIRMATIVE DEFENSE

(IPC'S CLAIM VIOLATES THE EXISTING CUSTOMER PROVISIONS OF THE SERVICE AREA AGREEMENT)

1-2. MJM realleges paragraphs 1 and 2 of the First Affirmative Defense as and for paragraphs 1 and 2 of the Fifth Affirmative Defense.

3. With respect to each of the ten customers made the subject of the IPC Complaint, MJM states that to the extent the Commission determines that any of such customers are located on the IPC side of the territorial boundary line, then in such event IPC is prevented by Section 1 (a) and (d) and Section 3(b) of the Service Area Agreement from providing electric service to any such customer to which MJM commenced the providing of electric service prior to August 4, 1971, being the date of Commission approval of the Service Area Agreement, such customers being identified as follows:

Bruce Hanold connected 12-30-55

Jim Rathgeb connected 5-16-40

John Ross connected 7-1-61

Dennis Lucker connected 2-24-60

June Lucker connected 5-4-94 (split service from Dennis Lucker)

WHEREFORE, MJM requests the Commission to deny the prayer of the Complaint filed by IPC and to dismiss the Complaint filed herein and to enter judgment in favor of MJM

to provide such electric service to each of the foregoing described customers and to provide such other and further relief to MJM as the Commission deems just and equitable.

M.J.M. ELECTRIC COOPERATIVE, INC.
Respondent,

By: *Dennis A. Keiser*
Dennis A. Keiser, General Manager

STATE OF ILLINOIS)
 : SS
COUNTY OF MACOUPIN)

DENNIS A. KEISER, General Manger of M.J.M. ELECTRIC COOPERATIVE, INC., being first duly sworn upon his oath, deposes and states that he is the General Manger for MJM Electric Cooperative, Inc., in the above entitled cause of action, that he has read the above and foregoing Answer and Affirmative Defenses by him subscribed and the same is true in substance and in fact.

Dennis A. Keiser
Dennis A. Keiser

Subscribed and Sworn to before me this

13th day of July, 2000.
Deborah L. Elliott
Notary Public



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Telephone: 217-632-2282

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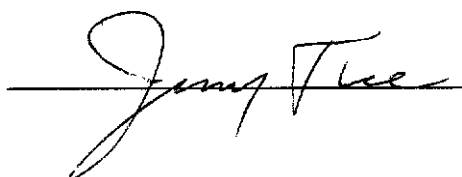
LEE J. PLUMMER
100 S. State St.
Jerseyville, IL 62052
Telephone: 618-498-5213

PROOF OF SERVICE

I, JERRY TICE, hereby certify that on the 17 day of July, 2000, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

Gregory Q. Hill
Hughes & Hill LLC
160 E. Main St.
Suite 200
P.O. Box 560
Decatur, IL 62525-0560

John Albers
Hearing Examiner
Illinois Commerce Commission
527 E. Capitol
P.O. Box 19280
Springfield, IL 62794-9280

A handwritten signature in cursive script, reading "Jerry Tice", written over a horizontal line.

GROSBOLL, BECKER, TICE & REIF
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